



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

April 28, 2003

Mr. Larry W. Wilshire  
Brown, Herman, Dean, Wiseman,  
Liser & Hart, L.L.P.  
306 West 7<sup>th</sup> Street, Suite 200  
Fort Worth, Texas 76102-4905

OR2003-2822

Dear Mr. Wilshire:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 180081.

The Granbury Housing Authority (the "authority"), which you represent, received several requests for information relating to mold testing done for the authority. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information constitutes a completed report, which is subject to section 552.022 of the Government Code. This section provides that "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body" is public and may not be withheld unless it is expressly confidential under other law or excepted from disclosure by section 552.108. Gov't Code § 552.022(a)(1). You do not claim that the submitted information is excepted under section 552.108. You assert that the submitted information is excepted under section 552.103. This section is a discretionary exception and is not "other law" for the purpose of section 552.022. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.-Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103), 522 at 4 (1989) (discretionary exceptions in general). Therefore the report may not be withheld on the basis of section 552.103.

However, the Texas Supreme Court held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." *In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). You also contend that the completed report constitutes a consulting expert report that may be withheld from disclosure under the consulting expert privilege, which is found in Rule 192.3(e) of the Texas Rules of Civil Procedure. Rule 192.3(e) provides that the "identity, mental impressions, and opinions of

a consulting expert whose mental impressions and opinions have not been reviewed by a testifying expert are not discoverable.” *See* Tex. R. Civ. P. 192.3(e).

You indicate that the authority hired the consultant because the authority anticipated litigation concerning alleged health problems of the authority’s tenants relating to the mold infestation in their apartments. You state that the consultant is not a testifying expert at this time and that the consultant’s impressions and opinions have not been reviewed by a testifying expert. We agree that the completed report reveals the identity, mental impressions, and opinions of a consulting expert. Accordingly, the authority may withhold the report under Rule 192.3(e) of the Texas Rules of Civil Procedure. *See In re City of Georgetown*, 53 S.W.3d 328 (Tex. 2001). As our ruling on this issue is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

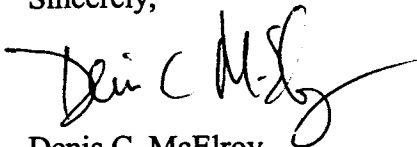
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep’t of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy  
Assistant Attorney General  
Open Records Division

DCM/lmt

Ref: ID# 180081

Enc. Submitted documents

c: Ms. Me'Lea L. Barker  
401 North Travis Street  
Granbury, Texas 76048  
(w/o enclosures)

Ms. Me'Lea L. Barker  
3920 Brook Valley  
Granbury, Texas 76048  
(w/o enclosures)

Ms. Danielle Hood  
306 Mill Street  
Granbury, Texas 76048  
(w/o enclosures)

Ms. Anne Wicker  
409 East Barton Street  
Granbury, Texas 76048  
(w/o enclosures)

Ms. Billie Latham  
432 North Travis Street  
Granbury, Texas 76048  
(w/o enclosures)

Mr. Timothy J. Mendolia  
Mayo, Medonlia, & Starr, P.C.  
2017 East Lamar Blvd., Suite 200  
Arlington, Texas 76006  
(w/o enclosures)